

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TRUSTEES OF THE PAVERS AND
ROAD BUILDERS DISTRICT
COUNCIL WELFARE, PENSION,
AND ANNUITY FUNDS, AND THE
TRUSTEES OF THE LOCAL 1010
APPRENTICESHIP, SKILL
IMPROVEMENT, AND TRAINING
FUND,

Plaintiffs,

-against-

TOROS BROTHERS
CONSTRUCTION CORP.,

Defendant.

MEMORANDUM AND ORDER

Case No. 24-CV-537

For the Plaintiffs:

MARLENA SMITH
ADRIANNA R. GRANCIO
Virginia & Ambinder, LLP
40 Broad Street, 7th Floor
New York, NY 10004

BLOCK, Senior District Judge:

On May 6, 2024, the Court referred a motion for default judgment by Trustees of the Pavers and Road Builders District Council Welfare, Pension, and Annuity Funds and The Trustees of the Local 1010 Apprenticeship, Skill Improvement, and Training Fund (collectively, the “Funds” or “Plaintiffs”) against

Toros Brothers Construction Corp. (“Defendant”) to Magistrate Judge Marcia M. Henry.

On March 16, 2025, Magistrate Judge Henry issued a Report and Recommendation (“R&R”) recommending the Court grant in part the motion for default judgment against Defendant and enter judgment in a total amount of \$276,891.56, including \$197,666.40 in unpaid benefits contributions, \$7,822.97 in Union Assessments for the period January 2023 through November 2023, \$13,623.46 in accrued interest on unpaid contributions calculated through April 12, 2024, any accrued interest of \$54.18 per day from April 13, 2024 until the date judgment is entered, \$4,684.91 in late payment interest for the periods of November 2021 and April 2022 through December 2022, \$19,766.64 in liquidate damages on the unpaid ERISA contributions, \$14,639.70 in attorneys’ fees, \$483.00 in costs, and post-judgment interest at the statutory rate set forth in 28 U.S.C. § 1961. *See* R&R at 24–25, ECF No. 17.

The R&R gave the parties fourteen days to file objections, i.e., until March 31, 2025, and warned that “[i]f a party fails to object timely to this Report and Recommendation, it waives any right to further judicial review[.]” *Id.* at 25. No objections have been filed. If clear notice has been given of the consequences of failing to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *Smith v. Campbell*,

782 F.3d 93, 102 (2d Cir. 2015) (“Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” (citations omitted)). The Court will, however, excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

No error, plain or otherwise, appears on the face of the R&R. Accordingly, the Court adopts the R&R without *de novo* review. The Court enters judgment for Plaintiffs against Defendant for a total of \$276,891.56, including \$197,666.40 in unpaid benefits contributions, \$7,822.97 in Union Assessments for the period January 2023 through November 2023, \$13,623.46 in accrued interest on unpaid contributions calculated through April 12, 2024, any accrued interest of \$54.18 per day from April 13, 2024 until the date judgment is entered, \$4,684.91 in late payment interest for the periods of November 2021 and April 2022 through December 2022, \$19,766.64 in liquidate damages on the unpaid ERISA contributions, \$14,639.70 in attorneys’ fees, \$483.00 in costs, and post-judgment interest at the statutory rate set forth in 28 U.S.C. § 1961.

The Clerk shall enter judgment in accordance with this opinion, amending Plaintiffs' proposed default judgment accordingly. *See* Proposed J. Ex. R, ECF No. 14-7.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
March 31, 2025